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No. 75-1513

In the Supreme Court of the United States

OCTOBER TERM, 1975

ALAN J. DIXON, Secretary of State of Illinois,
Appellant,

vs.

DENNIS N. LOVE,
Appellee.

Appeal From The United States District Court For The Northern District Of Illinois, Eastern Division

BRIEF FOR APPELLEE

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No. 75-1513

ALAN J. DIXON, Secretary of State of Illinois,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

Appeal From The United States District Court For The Northern District Of Illinois, Eastern Division

BRIEF FOR APPELLEE

QUESTION PRESENTED

Whether Section 6-206(a)(3) of the Illinois Motor Vehicle Code which gives the Illinois Secretary of State "Discretionary authority to suspend or revoke [a driver's] license . . . without preliminary hearing" violates due process of law by failing to provide some form of prior procedural safeguards?

STATEMENT OF THE CASE

The Secretary of State inadequately summarized the holding of the district court in his Statement of the Case. A full summary of the decision follows.

Dennis Love's driver's license was revoked pursuant to Ill. Rev. Stat., Ch. 95½, Sec. 6-206 which authorizes the suspension or revocation of a license without preliminary hearing. Such licenses are protected by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

The Secretary argued that revocation was automatic and a pre-termination hearing was unnecessary because the only factors entering into the decision are the number of convictions on a driver's record and each conviction was preceded by a hearing in traffic court. (App. at 19).

The district court rejected this argument on the ground that the statute allows the Secretary "a great deal of discretion" in taking action and therefore the suspension or revocation of the license does not follow automatically from conviction of a given number of traffic offenses. (App. at 20). The court noted:

> The statute makes suspension or revocation dependent on a determination of whether the driver's repeated involvement in collisions or conviction of offenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. The regulation makes suspension or revocation dependent *both* on such a determination *and* the accumulation of a given number of points, and even then the Secretary "may" but is not required to suspend or revoke the driver's license. (App. at 20).

It then held:

> So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked. (App. at 20).

The Secretary's argument that an "emergency situation" existed was noted and rejected after a comparison with Ill. Rev. Stat., Ch. 95½, Sec. 6-205, which mandates revocation for certain offenses such as manslaughter or driving while intoxicated. (App. at 21). The court also stated:

> In further contravention of the defendant's argument that an "emergency situation" exists is the length of time involved in the instant case between plaintiff's final conviction and his ultimate revocation. (App. at 21).

The statute was held unconstitutional:

> by virtue of its failure to provide the affected party notice and adequate opportunity to be heard. (App. at 22).

SUMMARY OF ARGUMENT

On June 3, 1975, Dennis Love received a notice from the Secretary of State that his driver's license was revoked effective June 6, 1975, pursuant to Ill. Rev. Stat., Ch. 95½, § 6-206(a)(3). The notice simply stated that the action had been taken as a result of:

> Your having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws. (App. at 13.)

The Secretary contends that the alleged ground on which the revocation was based was three suspensions within a ten-year period. Brief for Appellant at 6. Mr. Love's driving record, however, shows only two suspensions, both in 1969. (App. at 10). The Secretary though, goes on to argue

that at the time of the revocation there were grounds for the third suspension pursuant to § 6-206(a)(2) [1] and that he had merely not taken the intermediate step of making the suspension prior to invoking the revocation. Brief for Appellant at 6. The question then becomes whether grounds existed for the total suspension of Mr. Love's license under § 6-206(a)(2) and, therefore, for the total revocation under § 6-206(a)(3). In fact, such grounds did not exist. Section 6-206(a)(2) gives discretionary authority to the Secretary to suspend the driver's license of a person who has been convicted of three moving violations within a 12-month period. But, this section is specifically qualified by Section 6-206(c)(2) which provides that a person's license to drive a commercial vehicle shall not be revoked or suspended unless five offenses were committed within a 12-month period.

Mr. Love is a truck driver. He needs a license to drive a commercial vehicle in his occupation. Within the year prior to the revocation, Mr. Love had not been charged with five violations. He specifically came within the provisions of subsection (c)(2). Thus the Secretary did not have the authority to revoke Mr. Love's license to drive a commercial vehicle.

Section 6-206 specifically provides for revocation and suspension "without preliminary hearing." There was no statutory or administrative means to challenge the Secretary's decision to revoke prior to the effective date. The revocation of a driver's license without notice or a preliminary hearing violates due process. *Bell* v. *Burson*, 402 U.S. 535, 29 L.Ed.2d 90 (1971).

[1] Hereinafter all citations or references to section numbers without a full citation refer to the Illinois Motor Vehicle Code, Rev. Stat., Ch. 95½.

The basic purpose underlying the Due Process Clause is to avoid arbitrary, capricious, mistaken or authoritarian deprivations of significant interests. It requires the opportunity to be heard "at a meaningful time and in a meaningful manner." *Goldberg* v. *Kelly*, 397 U.S. 254, 267, 25 L.Ed.2d 287 (1970). At a minimum this means that action must be preceded by adequate notice and some form of *prior* hearing. *Board of Regents* v. *Roth*, 408 U.S. 564, 33 L.Ed.2d 548 (1972); *Mathews* v. *Eldridge*, 424 U.S. 319, 47 L.Ed.2d 18 (1976). The individual must be allowed to "tell his side of the story in order to make sure that an injustice is not done." *Goss* v. *Lopez*, 419 U.S. 565, 580, 42 L.Ed.2d 725 (1975).

Mr. Love's license was revoked. This was the most severe penalty that the Secretary could impose. Before taking any action the Secretary had to determine if grounds therefor existed. Mr. Love was charged with "disrespect for the traffic laws." Disrespect cannot be determined by the number of traffic tickets alone. At the very least, disrespect is a function of the relationship between the number of violations to the number of miles driven. In order for the question of disrespect to be accurately determined by the Secretary, he must hear Mr. Love's side.

Even if the Secretary was authorized to revoke, he still had the power to "decline to . . . revoke" under Rule 6-206 (a) promulgated by the Secretary [2] or to "substitute an order of suspension therefor . . .". Section 6-206(c)(3). A complete review of Mr. Love's driving record shows that the determination of disrespect is questionable and the

[2] Rules (administrative regulations) are numbered parallel to the statutory provisions to which they pertain. Thus, Rule 6-206(a) is the rule promulgated for the enforcement of Section 6-206(a) of the Illinois Motor Vehicle Code. Rule 6-206 is reproduced as Appendix C in the Brief for Appellants.

infliction of the maximum penalty is unjustified. Suspensions and revocations are not based on the absolute number of traffic violations, but on how they happen to be grouped. To be subject to consideration for suspension or revocation based upon the number of traffic tickets, a licensee must have been convicted for not less than three offenses committed within any twelve-month period. Mr. Love had had a driver's license for seven years prior to the revocation. During that time he was convicted of only six traffic offenses that count toward suspensions. Unfortunately, he grouped these six offenses into two groups of three, each group committed within a twelve-month period. During that same seven-year period it would have been possible for another driver to have been convicted of 14 traffic violations and, so long as no three were committed within any twelve-month period, not be subject to any suspension or revocation.

Under the present statutory scheme, there are no prior protections whatsoever. There is no way for a licensee to correct clerical error prior to revocation. There is no way for a licensee to obtain a restricted driving permit authorized by § 6-206(c)(3) "to relieve undue hardship" prior to the onset of such a hardship. There is no way for a licensee to correct misapplications of the statute to particular factual circumstances prior to the Secretary's action. There is no way for the licensee to present mitigating circumstances pertaining to both the decision to revoke and the severity of the penalty prior to the decisions. The interest of a licensee in obtaining even minimal rudiments of due process is indeed great.

The Secretary recognizes that due process must be applied to this case and concedes that there must be a hearing "at a meaningful time." Brief of Appellant at 10. He

then claims that due process does not require a hearing before revocation because (a) his action was mandatory and ministerial, or even if there was discretion exercised, (b) the emergency nature of the situation required prompt action. Alternatively, the Secretary argues that pre-revocation due process was afforded in traffic court. The Secretary's assertions are incorrect.

2. The Secretary's revocation of Mr. Love's license was made pursuant to the Secretary's discretionary authority. Mr. Love's license revocation was effected pursuant to §6-206, which is explicitly headed "Discretionary Authority to Suspend or Revoke License or Permit—Right to a Hearing." Further, Rule 6-206 provides that

> The Secretary of State is authorized to exercise discretionary authority to suspend or revoke driving privileges and the evidence thereof without a preliminary hearing, or to decline to suspend or revoke such driving privileges.

The discretionary nature of a suspension or revocation pursuant to §6-206 is further underscored by a comparison of that section with the preceding section, 6-205, which is labeled "Mandatory Revocation of License or Permit—Hardship Cases" and provides: ". . . the Secretary of State shall forthwith revoke the license or permit of any driver upon receiving a report of such driver's conviction of any of the following offenses: . . .". Indeed, under §6-205, at the end of the traffic court hearing, the license is physically surrendered to the Clerk of the Court to be forwarded to the Secretary. The Illinois legislature clearly understood the difference between discretionary and mandatory authority when it enacted these two consecutive sections.

Finally, because the Secretary considers the procedure in question to be totally mandatory and ministerial, he

maintains there is no need for any pre-termination hearing or procedures because there is no way in which such a hearing could change the result. Obviously, under this theory, there is no way that a post-termination hearing could change the result either. Yet, §6-206 provides for an elaborate, full evidentiary post-termination hearing complete with subpoena power and examination of witnesses under oath. But during the pendency of this post-termination hearing the revocation remains in full force and effect.

3. The Secretary alternatively claims that an "emergency" situation existed which obviated the necessity for a pre-suspension or pre-revocation hearing. (Brief of Appellant at 24). The emergency situation claimed is the protection of the general welfare by the removal of dangerous drivers from the highways. This contention is frivolous.

Mr. Love was specifically not charged with being a dangerous driver or with having a disregard for the safety of other persons on the highways as authorized by §6-206 (a)(3). He was only charged with a disrespect for the traffic laws. To invoke the limited emergency exception to the Due Process Clause, it must be shown that the emergency "was necessary and justified in the particular instance." *Fuentes* v. *Shevin,* 407 U.S. 67, 32 L.Ed.2d 556 (1972). On the facts, the Secretary has not met this requirement.

In order for a summary action to meet the extraordinary situation requirement, it must have been taken pursuant to the standards of the statute narrowly drawn to meet only unusual conditions. *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337, 339, 23 L.Ed.2d 349 (1969). Section 6-206 authorizes discretionary suspension or revocation of a driver's license "without preliminary hearing" for

20 reasons including situations where an emergency could not possibly exist and where there is no possible inference from the ground of revocation that the licensee is a dangerous driver. The statute is neither narrowly drawn nor drawn with sufficient standards to determine when emergency action is necessary and justified.

There is no special need for prompt action where Mr. Love's license revocation was based on activities that took place over a period of seven years. The traffic violation giving rise to Mr. Love's revocation was his sixth conviction in seven years. There is nothing magical about the sixth conviction that creates an emergency situation that was not present at the time of the fifth conviction. Indeed, the revocation is actually based on how traffic violations are grouped and not their absolute number. Thus, another driver could have had 14 traffic violations within the same seven year period and not be subject to any suspension or revocation, let alone an emergency revocation.

If an emergency actually existed, it would be expected that the Secretary would treat the situation as an emergency. However, after the last conviction, the Secretary waited over two months before acting. The Secretary, judged by his own actions in this case, did not treat the situation as an emergency. An after-the-fact claim of an emergency cannot justify a denial of due process.

4. The due process hearing requirement is not met by the proceedings in traffic court. In claiming that it is, the Secretary again assumes that revocation is mandatory and ministerial rather than discretionary. As we have shown above, the revocation is discretionary. A traffic court determines guilt or innocence only as to a particular ticket. The Secretary, on the other hand, must make a determination of whether the driver's overall record of traffic of-

fenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. These considerations are not before the traffic court judge. In addition, the Secretary must also determine the appropriate punishment, i.e., the length of a suspension and the terms and conditions of a revocation or suspension. None of these considerations are to be found within a finding of guilty by a traffic court on a traffic citation.

5. Reconciling due process and highway safety is not difficult. Other states recognize the serious consequences that flow from license suspension or revocation and offer meaningful opportunities for licensees to contest or otherwise respond prior to a proposed suspension or revocation. A wide range of methods have been adopted by other states to comport with the dictates of due process. Some provide a full evidentiary hearing prior to suspension or revocation before either the administrative agency or a court. Others require the giving of a detailed notice of the grounds and the evidence relied upon for the proposed action, a sufficient amount of time prior to the effective date, and allow the licensee to request a hearing, with the suspension or revocation stayed until the final determination at the hearing.

Mr. Love prays that the present Illinois statute and administrative procedures be declared unconstitutional and that the State be required to provide adequate notice and an opportunity for a hearing prior to the discretionary suspension or revocation of a driver's license. He is not asking this Court to draft and impose upon Illinois a specific scheme. We have however set forth several alternative methods of compliance with due process requirements that have been adopted by other states and that may be adopted by Illinois.

ARGUMENT

I.

DUE PROCESS REQUIRES SOME FORM OF PRIOR HEARING BEFORE THE SECRETARY MAY EXERCISE DISCRETIONARY POWERS TO DEPRIVE A PERSON OF A PROTECTED INTEREST, ABSENT EMERGENCY CIRCUMSTANCES.

Dennis Love is a truck driver. He depends on his driver's license to earn his livelihood and support his family. The Secretary of State revoked Mr. Love's driver's license without giving him any opportunity to contest the decision prior to its effective date.

Under Illinois law, the Secretary was not authorized, even as an exercise of his discretion, to revoke Mr. Love's license to drive a commercial vehicle in his occupation.[3] Even the Secretary's discretionary authority to revoke Mr. Love's private driver's license need not have been exercised.[4]

No legal or political concept more appropriately defines our system of justice and separates it from others than does the concept of due process. The touchstone of due process is protection of the individual against arbitrary action of government. *Wolff* v. *McDonnell,* 418 U.S. 539, 558, 41 L.Ed.2d 935 (1974). "The Fourteenth Amendment as applied to the States, protects the citizen against the State itself and all its creatures. . . [The States] have, of course, important, delicate and highly discre-

[3] See §6-206(c)(2) and discussion hereinafter at 39.

[4] See Rule 6-206(a) and discussion hereinafter at 16.

tionary functions, but none that they may not perform within the limits of the Bill of Rights." *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624, 637, 87 L.Ed. 1628 (1943).

The basic purpose underlying the Due Process Clause is to avoid arbitrary, capricious, mistaken or authoritarian deprivations of significant interests. Thus, at a minimum, due process requires that before a state may deprive a person of life, liberty or property, such action must be preceded by notice and an opportunity for a hearing appropriate to the nature of the case, *Mullane* v. *Central Hanover Tr. Co.,* 339 U.S. 306, 313, 94 L.Ed. 865 (1950), to allow the individual to "tell his side of the story in order to make sure that an injustice is not done". *Goss* v. *Lopez,* 419 U.S. 565, 580, 42 L.Ed.2d 725 (1975). As this Court stated in *Bell* v. *Burson,* 402 U.S. 535, 29 L.Ed.2d 90 (1971):

> . . . It is fundamental that except in emergency situations . . . due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' *before* the termination becomes effective. (402 U.S. at 542).

The interest protected by the Due Process Clause in *Bell* was a driver's license. The same interest is involved here. Accordingly, it is unquestioned that Mr. Love's driver's license cannot be revoked by the Secretary except in compliance with the requirements of due process. As stated by this Court in *Bell*:

> Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. (402 U.S. at 539).

Due process is a flexible concept that calls for the procedural protections required by the particular situation. *Morrissey* v. *Brewer,* 408 U.S. 471, 481, 33 L.Ed.2d 484 (1972); *Mathews* v. *Eldridge,* 424 U.S. 319, 47 L.Ed.2d 18 (1976).

It requires the opportunity to be heard "at a meaningful time and in a meaningful manner", *Goldberg* v. *Kelly,* 397 U.S. 254, 267, 25 L.Ed.2d at 287 (1970), which means some form of *prior* hearing. E.g., *Board of Regents* v. *Roth,* 408 U.S. 564, 33 L.Ed.2d 548 (1972):

> [A] weighing process has long been a part of any determination of the form of hearing required in particular situations by procedural due process.[8] (408 U.S. at 570.)

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[8] The constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course, does not depend upon such a narrow balancing process. (408 U.S. at 570, n.8.)

In *Boddie* v. *Connecticut,* 401 U.S. 371, 378, 28 L.Ed.2d 113 (1971) this Court stated:

> That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest . . .

Finally, in *Fuentes* v. *Shevin,* 407 U.S. 67, 86, 32 L.Ed.2d 556 (1972) this Court held:

> While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind.

Other situations which require prior procedural safeguards include: termination of welfare benefits (*Goldberg* v. *Kelly,* 397 U.S. 254, 25 L.Ed.2d 287 (1970)); parole revocation (*Morrissey* v. *Brewer,* 408 U.S. 471, 33 L.Ed.2d 484 (1972)); probation revocation (*Gagnon* v. *Scarpelli,* 411 U.S. 778, 36 L.Ed.2d 656 (1973); prison inmate's loss of "good time" (*Wolff* v. *McDonnell,* 418 U.S. 539, 41 L.Ed. 2d 935 (1974)); termination of a federal civil servant (*Arnett* v. *Kennedy,* 416 U.S. 134, 40 L.Ed.2d 15 (1974)); and termination of Social Security disability benefits (*Mathews* v. *Eldridge,* 424 U.S. 319, 47 L.Ed.2d 18 (1976)).

In this case, Mr. Love's duly issued driver's license was revoked by the Secretary of State pursuant to a statute and regulation that provide for no pre-termination hearing or proceeding, formal or informal. Section 6-206 and Rule 6-206 both succinctly and unambiguously provide that the Secretary of State may suspend or revoke a driver's license "without preliminary hearing." Neither provides for any possible hearing prior to the deprivation. In his enforcement of §6-206, the Secretary does not provide any form of pre-revocation protection. The statute, therefore, violates the Due Process Clause on its face and as applied.

The Secretary recognizes that due process must be applied to this case and concedes that there must be a hearing "at a meaningful time." Brief for appellant at 10. He then claims that due process does not require a hearing before revocation because (a) his action was mandatory and ministerial, or even if there was discretion exercised, (b) the emergency nature of the situation required prompt action. Alternatively, the Secretary argues that pre-revocation due process was afforded in traffic court.

The Secretary's assertions are incorrect. The Secretary was not mandatorily required to revoke Mr. Love's license.

(Section A below.) Allegations of emergency are undercut by the seven year period of allegedly disrespectful driving for which Love's license was revoked and by the two months it took the Secretary to make his summary decision. (Section B below.) Traffic court did not provide the appropriate due process hearings in this case because the issues it decided--whether or not Love violated certain driving rules—were different from the issues in this license revocation case, whether or not Love's driving record "indicates disrespect for traffic laws and the safety of other persons on the highway." (Section C below.)

A. The Secretary's Revocation Of Mr. Love's License Was Made Pursuant To Discretionary Authority.

In this case, Mr. Love's duly issued driver's license was revoked by the Secretary of State pursuant to §6-206(a)(3). The Secretary argues that no pre-termination procedures are necessary or would have any value because he claims that the revocation was mandatory, automatic and ministerial, not discretionary.[5] The Secretary maintains that the action he took under §6-206(a)(3) was based solely "on the number of traffic violations for which the driver had been convicted and the number of 'points' accumulated on those convictions. . .". Brief for Appellant at 3. He argues that suspension or revocation follows automatically on a consideration of these two factors and no other factors

[5] Even if the revocation were mandatory and automatic, as the Secretary urges, due process protection would still be required. *Reese* v. *Kassab,* 334 F.Supp. 744 (W.D.Pa., 1971); *Warner* v. *Trombetta,* 348 F. Supp. 1068 (M.D.Pa., 1972), *aff'd. mem.,* 410 U.S. 919. Whether that protection must come before a mandatory revocation, is a question to be considered in another case. This case raises only the question of what procedures and protections due process requires prior to a discretionary revocation of the license.

may be considered. This argument is legally and factually incorrect.

1. Mr. Love's license revocation was effected pursuant to §6-206, which is explicitly headed "Discretionary authority to suspend or revoke license or permit—Right to a hearing."[6] The discretionary aspect of this statute is made even more explicit by the Secretary's Rule 6-206(a), promulgated under the Illinois Vehicle Code, which provides:

> The Secretary of State is authorized to exercise discretionary authority to suspend or revoke driving privileges and the evidence thereof without a preliminary hearing, *or to decline to suspend or revoke such driving privileges.* (Emphasis added.)

The discretionary nature of a suspension or revocation pursuant to §6-206 is further underscored by a comparison of that section with the preceding section, 6-205, which is labeled "Mandatory revocation of license or permit—Hardship cases" and provides ". . . The Secretary of State shall forthwith revoke the license or permit of any driver upon receiving a report of such driver's conviction of any of the following offenses: . . .".

The Illinois legislature clearly understood the difference between discretionary and mandatory authority when it enacted these two consecutive sections. Under §6-205, the Secretary is mandatorily required to take action upon receiving a report of certain convictions from a court clerk. Furthermore, the action he must take is revocation. Under §6-205, the Secretary has no decisions to make and his actions are purely ministerial.

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[6] The driving record of Mr. Love notes the "(02) discretionary revocation" on 6/6/75. App. at 10-11.

On the other hand, under §6-206, he has three factual or discretionary decisions to make:

> (a) Whether grounds for action exist. The Secretary cannot take any action until he has affirmatively determined that the licensee lacks ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, has a disrespect for the traffic laws, or, has a disrespect for the safety of other persons upon the highway. Section 6-206(a)(3).
>
> (b) If the Secretary determines grounds exist, he must then determine if any action is warranted. Rule 6-206(a) authorizes him to "decline" to act.
>
> (c) If the Secretary determines some action is warranted, he must decide the specific penalty to be imposed. Even where revocation is called for, as in Rule 6-206(a)(3), he may "substitute an order of suspension therefor." Section 6-206(c)(3).

Each of these three decisions requires the Secretary to consider, balance and weigh several factors. This discretion which the Secretary must exercise has been described by this Court in *The Styria* v. *Morgan*, 186 U.S. 1 (1902) and *Langres* v. *Green*, 282 U.S. 531, 75 L.Ed. 520 (1931) as follows:

> The term *discretion* implies the absence of a hard-and-fast rule. The establishment of a clearly defined rule of action would be the end of *discretion*, and yet discretion should not be a word for arbitrary will or inconsiderate action. 'Discretion means a decision of what is just and proper in the circumstances'. Bouvier's Law Dict. (186 U.S. at 9.)
>
> The term "discretion" denotes the absence of a hard and fast rule. . . . When invoked as a guide to judicial action it means a sound discretion, that is to say, a discretion exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result. (282 U.S. at 541.)

In order to reach a result that is "right and equitable under the circumstances and the law", it is necessary to first give the licensee an opportunity, after proper notice, to "tell his side of the story in order to make sure that an injustice is not done." *Goss* v. *Lopez,* 419 U.S. 565, 580, 42 L.Ed.2d 725 (1975).

2. The Secretary's statement to the contrary notwithstanding, neither the statute nor the regulation provides that suspension or revocation of a license follows automatically from conviction of a given number of traffic offenses or the accumulation of a given number of points. In making the determination, Rule 6-206(a) provides that:

> The Secretary of State *shall* take into consideration the severity of the offense and conviction, the number of offenses and convictions, and prior suspensions or revocations on the abstract of the driver's record. The Secretary *may* also take into consideration the points accumulated by the driver and noted on his driving record. (Emphasis added.)

Thus, under the regulation, the number of points accumulated does not even have to be considered in deciding whether to take action; it is a discretionary consideration.

Although the Secretary must consider the number of traffic offenses in reaching his decision, this is but one factor to consider. The number of violations does not, by itself, determine the result.

A comparison with §6-205 is again enlightening. In authorizing mandatory revocations under that section, the legislature specifically provided that "the Secretary of State shall forthwith revoke the license or permit of any driver upon receiving a report of such driver's conviction of any of the following offenses: . . .". Following is a list of offenses such as manslaughter or reckless homicide while

using an automobile, drunken driving, use of a car in the commission of a felony, leaving the scene of an accident involving death or personal injury, and three convictions for reckless driving. If the Illinois legislature had intended to make suspension or revocation mandatory and automatic upon the conviction of three moving violations other than reckless driving,[7] it would have so provided in the §6-205 list.

3. Finally, because the Secretary considers the procedure in question totally mandatory, he maintains there is no need for any pre-termination hearing or procedures because there is no way in which such a hearing could change the result. Obviously, under this theory, there is no way that a post-termination hearing could change the result either. Yet §6-206 provides an elaborate termination hearing pursuant to §2-118 of the Illinois Motor Vehicle Code. The latter section in turn provides for a full evidentiary hearing complete with subpoena power and examination of witnesses under oath.[8] Surely the legislature would not require such elaborate expenditures of time, energy and money if it had considered the Secretary's decisions under §6-206 automatic, ministerial and not subject to change. In fact, the legislature specifically provided:

> At the conclusion of a hearing pursuant to Section 2-118, the Secretary of State shall either rescind or continue an order of revocation or shall substitute an order of suspension therefor; or, good cause appearing therefor, rescind, continue, change or extend his order of suspension. (§6-206(c)(3))

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[7] Mr. Love has never been charged with or convicted of reckless driving.

[8] However, during the pendency of this hearing the suspension or revocation remains in full force and effect.

B. An Emergency Situation Does Not Exist.

Due process is not an absolute concept. There are some extraordinary situations where constitutional protections must be temporarily suspended. The rarity of these instances is well shown by the terms used by this Court to describe them: "extraordinary situations" (*Boddie* v. *Connecticut,* 401 U.S. 371, 379, 28 L.Ed.2d 113, 1971); "truly unusual" (*Fuentes* v. *Shevin,* 407 U.S. 67, 90, 32 L.Ed.2d 556, 1972); "emergency situations" (*Bell* v. *Burson,* 402 U.S. 535, 542, 29 L.Ed.2d 90, 1971); and, "rare and extraordinary" (*Board of Regents* v. *Roth,* 408 U.S. 564, 570, 33 L.Ed.2d 548, 1972).

In *Fuentes,* this Court set forth the three conditions that must coincide to create such an extraordinary situation:

> First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. (407 U.S. at 91.)

While allowing very limited exceptions to the Due Process Clause, this Court has consistently recognized and reaffirmed the basic value of and need for a broad, consistent application of the concept. Thus, "at its core, the right to due process reflects a fundamental value in our American constitutional system", *Boddie* v. *Connecticut, supra,* at 374, and "the constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of" a protected interest. *Fuentes* v. *Shevin, supra,* at 80. The government that claims the right to act in disregard

of the Constitution faces a heavy burden to show that it falls within the rare exceptions.

In the case at bar, the Secretary claims that an "emergency" situation exists "which obviates the necessity for a pre-suspension or pre-revocation hearing". Brief for Appellant at 24. The emergency situation claimed is the protection of the general welfare by the removal of dangerous drivers from the highways. This contention is frivolous:

1. Mr. Love was specifically not charged with being a dangerous driver or with having a disregard for the safety of other persons on the highway.

2. The statute is neither narrowly drawn nor drawn with sufficient standards to determine when emergency action is necessary and justified.

3. There is no special need for prompt action where Mr. Love's license revocation was based on activities that allegedly took place over a period of seven years.

4. The Secretary did not treat the situation as an emergency.

1. Mr. Love Was Specifically Not Charged With Being A Dangerous Driver, Or With Having A Disregard For The Safety Of Other Persons On The Highway.

The only reason given by the Secretary to justify an emergency revocation of Mr. Love's license without due process was to protect "the general welfare by the speedy removal of dangerous drivers from the highways . . .". (Brief for Appellant at 8). This reason is inapplicable to Mr. Love. The Secretary charged Mr. Love only with:

> having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws. (App. at 13).

Mr. Love's license was revoked pursuant to §6-206(a)(3). In addition to "disrespect for the traffic laws", that statute specifically lists "lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle" and "disrespect for . . . the safety of other persons upon the highway" as grounds for revocation. Mr. Love was not charged with either of these grounds.

Having not charged Mr. Love with being an unsafe or dangerous driver, the Secretary now seeks to justify the revocation of the license of a non-dangerous, but allegedly disrespectful driver, without prior due process protection because of the alleged emergency nature of the situation. To invoke the limited emergency exception to the Due Process Clause, it must be shown that the emergency "was necessary and justified *in the particular instance.*" *Fuentes, supra,* at 91 (emphasis supplied). On the facts, the Secretary has not met this requirement.

2. The Statute Is Neither Narrowly Drawn Nor Drawn With Sufficient Standards To Determine When Emergency Action Is Necessary And Justified.

In order for a summary action to meet the extra-ordinary situation requirement, it must have been taken pursuant to the standards of a statute narrowly drawn to meet only unusual conditions. *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 339, 23 L.Ed. 2d 349 (1969); *Fuentes* v. *Shevin, supra.* But Section 6-206 authorizes discretionary suspension or revocation of a driver's license "without preliminary hearing" in a number of situations where it cannot be automatically inferred that there is dangerous driving constituting an emergency. It permits revocation without hearing for 20 reasons, including:

3. Disrespect for the traffic laws.

5. Permitting an unlawful or fraudulent use of a license or permit.

8. Being ineligible for a license or permit for any of the 11 reasons set forth in §6-103. These reasons include being under age 18, "suffering from any mental disability", and failure to deposit proof of financial responsibility.

9. Making a false statement or knowingly concealing a material fact in any application for a license or a permit.

10. Displaying or representing as his own any license or permit not issued to him.

12. Submitting to an examination for the purpose of obtaining a driver's license or permit for some other person.

14. Having been convicted of violating any of the eight provisions of §6-301. These offenses include possessing a cancelled license, lending a license, displaying someone else's license, and non-feloniously failing to perform any act required by the Motor Vehicle Code.

This is not a narrowly drawn statute.

The Secretary may be justified, for example, in revoking the driver's license of a person who took the driver's license examination for another person. But there can be no inference in this violation that the person taking the test is a dangerous driver. Actually, the opposite inference (that he is a good driver) is more appropriate. The Secretary may be justified, after a hearing, in revoking the license of a driver who allows a minor to use it as proof of majority. But there can be no automatic inference that such a person is a dangerous driver. Similarly, a person may be disrespectful of the traffic laws but not be a dangerous driver, which is the conclusion the Secretary obviously came to with regard to Mr. Love.

Section 6-206 lacks standards to determine when emergency action is actually necessary and justified. The statute simply gives blanket authorization to ignore due process in situations where an emergency could not possibly exist and where there is no possible inference from the ground of revocation that the licensee is a dangerous driver.

3. There Is No Special Need For Prompt Action Because Mr. Love's License Revocation Was Based On Alleged Activities That Took Place Over A Period Of Seven Years.

The Secretary claims he was faced with an "emergency situation". What is the emergency? When did it become apparent? Emergency is defined as:

> "EMERGENCY. A sudden unexpected happening; an unforeseen occurrence or condition; specifically, perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity. (Black's Law Dictionary, Rev. 4th ed. (1968)).

In the constitutional sense, the requirement that immediate action is necessary to forestall an obviously disastrous result must be added to the definition.

In the cases cited by the Secretary as examples of when this Court has upheld summary action for emergency reasons (Brief for Appellant at 21), both parts of the definition have been present, *i.e.*, (a) a sudden occurrence, (b) requiring immediate action to forestall a disaster. Thus, summary seizure of property was allowed in *North American Storage Co.* v. *Chicago*, 211 U.S. 306, 53 L.Ed. 195 (1908) to protect the public from contaminated food; in *Fahey* v. *Mallonee*, 332 U.S. 245, 91 L.Ed. 2030 (1947) to protect against the economic disaster of bank failure; and in *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594, 96 L.Ed. 1078 (1950) to protect the public from misbranded drugs.[9]

In the case at bar, there was no sudden emergency requiring immediate action. The revocation of Mr. Love's driver's license was based on a course of conduct encompassing seven years. Mr. Love received a traffic citation on August 20, 1968, and was subsequently found guilty of that violation. But for that 1968 traffic ticket, Mr. Love's driver's license would not have been revoked on June 6, 1975.

The traffic violation conviction giving rise to Mr. Love's revocation was his sixth conviction in seven years. There is nothing magical about the sixth conviction that creates an emergency situation that was not present at the time of the fifth conviction. The Secretary's claim of an emergency becomes more ludicrous when it is realized that the revocation is actually based on how the traffic violations are grouped and not their absolute number. Mr. Love's driver's license was revoked because he allegedly had three suspensions within ten years. In order for a license to be suspended for traffic violations, the licensee must have been convicted of not less than three offenses committed within any 12-month period. Sec. 6-206(a)(2). Mr. Love had a driver's license for seven years prior to the revocation. During that time he was convicted of only six traffic

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[9] The Secretary's citation of *F.T.C.* v. *Dean's Food Co.*, 384 U.S. 597, 16 L.Ed. 2d 802 (1966) is misplaced. In that case the F.T.C. sought an injunction against a merger pending administrative hearings. The injunction was not granted until after notice and a full hearing. Thus, no due process question was presented.

offenses that count toward a §6-206(a)(2) suspension.[10] Unfortunately, he grouped these six offenses into two groups of three, each group committed within a 12-month period and resulting in the first suspension and the revocation.[11] During that same seven year period it would have been possible for another driver to have been convicted of 14 traffic violations and, as long as no three were committed within any 12-month period, not be subject to any suspension or revocation.

Clearly, this case does not present an emergency situation requiring the suspension of one of our most basic constitutional guarantees. This case does present a clear example of a situation where a state official is authorized to take discretionary punitive action against a licensee. Such action must be preceded by some form of hearing.

4. The Secretary Did Not Treat The Situation As An Emergency.

After the last conviction, the Secretary waited over two months before acting. The conviction giving rise to the Secretary's action occurred on March 31, 1975. The Clerk of the Court is required to forward to the Secretary of State a report of the conviction within 10 days. Sec. 6-204(a)(2). The Secretary did not revoke the license until June 6, 1975. The two months which elapsed before the

[10] The April 21, 1968 ticket shown on Mr. Love's driving record (App. at 10) was for having a broken tail light and does not count toward a suspension. The November 12, 1969 notation is for driving while suspended.

[11] The second suspension resulted from Mr. Love driving during the first suspension.

Secretary acted afforded ample opportunity for a hearing,[12] as was clearly demonstrated by subsequent events. On June 6, 1975, the district court issued a temporary restraining order suspending the revocation on the condition that the plaintiff apply for a hardship license. Mr. Love so applied on June 10th. The Secretary then held a hearing and on July 25th, less than two months later, issued a hardship license.

The Secretary, judged by his own action in this case, did not treat the situation as an emergency. *Jones* v. *Penny*, 387 F.Supp. 383 (D.N.C. 1974). An after-the-fact claim of an emergency cannot justify a denial of due process.

C. The Due Process Hearing Requirement Is Not Met By The Proceedings In Traffic Court.

The Secretary does not contest the fact that the statute fails to provide for any type of hearing by the Secretary prior to revocation or that it is not possible to obtain one. Instead, as one alternative argument, the Secretary claims due process does not require him to provide any type of pre-revocation hearing because there is a hearing on the merits of each underlying traffic violation in traffic court. This argument is without merit.

[12] The Secretary argued below that the conviction did not become final for 30 days (which is the time for appeal in Illinois) and he could not act within that period. This contention is without merit. Section 6-206(b) provides "if any conviction forming the basis of a suspension or revocation authorized hereunder is appealed, the Secretary of State may rescind or withhold the entry of the order of suspension or revocation. . . .". This provision clearly contemplates action before the time for appeal has expired. In any event, the Court below, accepting arguendo the Secretary's contention, found a delay of only one month too long to indicate an emergency situation. (App. at 21).

1. In making this argument, the Secretary again assumes that the revocation is mandatory and automatic rather than discretionary. As we have shown above[13] the revocation is discretionary. In addition to the convictions, the statute makes suspension or revocation dependent on a determination of whether the driver's repeated involvement in collisions or conviction of offenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. In making the decision to suspend or revoke, the Secretary therefore must take into consideration factors in addition to the mere number of convictions.

For example, with even a minimal prior hearing Mr. Love could show that a review of his complete driving record and the number of miles that he has driven demonstrate that he is not disrespectful to the traffic laws. He could also have pointed out that his commercial license could not lawfully be revoked.[14] Sec. 6-206(c)(2).

In contrast, a traffic court determines guilt or innocence only as to a particular ticket. The questions of a driver's lack of ability, disrespect for the traffic laws or the safety of others on the highways, are discretionary elements that must be determined before a suspension or revocation is found to be appropriate; they are never before the traffic court judge.

Under these circumstances the holding of the district court, concerning discretionary revocation, should be affirmed:

> So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard,

[13] See Section A, pp. 15 to 19.

[14] See Section II B 1, p. 37 below.

> a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked. (App. at 20)

Accord, *Cicchetti* v. *Lucey*, 377 F.Supp. 215 (D.Mass. 1974); *Kentucky* v. *Thomas*, 467 S.W.2d 335 (Ky. 1971); *Nusberger* v. *Wisconsin Division of Motor Vehicles*, 352 F.Supp. 515 (W.D.Wis. 1973); and *Jones* v. *Penny*, 387 F.Supp. 383 (D.N.C. 1974).

Further, the Secretary's determination that there is cause to suspend or revoke a license does not end the matter. The Secretary must also determine the appropriate punishment, *i.e.* the length of a suspension and the terms and conditions of a revocation or suspension. None of these considerations are to be found within a finding of guilty by a traffic court on a traffic citation.

In this case, for example, it was ultimately determined by the Secretary that revocation would create undue hardship. The hearing on the hardship question only makes sense prior to the effective date of the revocation and consequent hardship.

In addition to the issuance of a restricted driving permit, the Secretary has numerous other discretionary powers regarding the action to be taken against any licensee. Where the Secretary has the power and authority to revoke a license, he may "substitute an order of suspension therefor". §6-206(c)(3). The length of a suspension is also discretionary with the Secretary. The number of "points" that a driver has accumulated only sets the maximum length of a suspension. Rule 6-206(a)(2) authorizes the Secretary to suspend for a lesser period of time. None of these considerations are before the traffic court.

Wright v. *Malloy*, 373 F.Supp. 1011 (D. Vt., 1974), *aff'd. mem.*, 419 U.S. 987, 42 L.Ed. 2d 261 (1974), cited by

the Secretary (Brief for Appellant at 18), actually supports Mr. Love's position and the holding of the district court. *Wright* involved a revocation pursuant to Vermont's financial responsibility laws. In *Bell* v. *Burson*, 402 U.S. 535, 29 L.Ed. 2d 90 (1971) this Court had held that if fault is an important factor in a State's decision to suspend or revoke a license pursuant to its financial responsibility laws, the state may not revoke the license until such time as there has been a prior hearing on the issue of fault. Subsequent to the *Bell* decision, Vermont amended its financial responsibility statute to provide for a hearing on the issue of fault prior to the time action is taken by the Commissioner. As summarized by the court in *Wright*, the statute provided that proof of financial responsibility would be required:

> . . . only upon the determination of fault by the Commissioner after due notice and hearing. At the same time, the statute challenged in this action was amended to provide for a hearing with reference to fault if the operator's conviction for the motor vehicle violation arising out of the accident does not indicate that he was at fault in any degree. If the conviction indicates fault, the operator is required to file proof of future financial responsibility and suffer the loss of his license without an independent hearing as to such fault. (373 F.Supp. at 1017).

Thus, under the Vermont statutory scheme if all of the elements necessary to require proof of financial responsibility are heard and determined in connection with the hearing on the traffic court violation, the Commissioner need not provide a separate hearing. However, if all the factors are not heard and determined in connection with the traffic court violation, the Commissioner must provide a hearing on those issues prior to requiring proof of financial responsibility or revoking a license.

In the case at bar, the Secretary's decision to revoke Mr. Love's license was based on factors not considered or determined in traffic court. Therefore, the Secretary should have given Mr. Love a hearing on those factors prior to revocation. *Wright* is entirely consistent with and supportive of Mr. Love's position.

2. The fallacy of the Secretary's claim that due process requirements are fulfilled by the traffic court proceedings with regard to a discretionary suspension or revocation under §6-206 is further illustrated by a comparison to the statutory provisions in §6-205 regarding mandatory revocations. In mandatory revocation situations, all the elements required for revocation are determined in traffic court. Nor does the Secretary have discretion as to the penalty to be imposed. Sec. 6-205 provides only for revocations.[15]

The Secretary thus only carries out ministerial acts. Indeed, the license is actually surrendered in Court at the time of the conviction and forwarded to the Secretary by the Clerk of the Court. Sec. 6-204.[16] The Secretary merely stamps license "revoked".

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[15] The Secretary may grant a hardship license under §6-205, but the court is specifically empowered to make recommendations as to such license. The court has no such power under §6-206.

[16] Sec. 6-204 provides, in part:

> Whenever any person is convicted of any offense for which this Act makes mandatory the revocation of the driver's license or permit of such person by the Secretary of State, the judge of the court in which such conviction is had shall require the surrender to the clerk of the court of all driver's licenses or permits then held by the person so convicted, and the clerk of the court shall, within 10 days thereafter, forward the same, together with a report of such conviction to the Secretary.

The Secretary's reliance on *Scott* v. *Hill,* 407 F.Supp. 301 (E.D. Va., 1976), is therefore inappropriate. *Scott* involved a mandatory revocation[17] under Va. Code §46.1-421(b), which provides "The Commissioner shall forthwith revoke and not thereafter reissue operator's or chauffeur's license of any person upon receiving a record of a third conviction of such person" for drunken driving. Under that statute, the Commissioner was prohibited from considering any factor other than the three drunk driving convictions. The Commissioner had a mandatory duty to act "upon receiving a record of a third conviction". The revocation considered in the *Scott* case was merely a ministerial act, automatic upon three drunken driving convictions. The Virginia statute in the *Scott* case is substantially similar to the Illinois mandatory revocation statute. §6-205. There are no additional factors to be determined outside the traffic court hearing.

The State of Virginia, like Illinois, differentiates between mandatory and discretionary suspensions and revocations. But Virginia, unlike Illinois, provides that a licensee is entitled to a prior judicial hearing, completely separate from traffic court, to determine whether his license should discretionarily be suspended or revoked. Thus, under Va. Code §46.1-387.1 the Commissioner may take action to suspend or revoke the license of individuals who have "demonstrated their indifference for the safety and welfare of others and their disrespect for the laws. . .". The initial determination to take action is determined by the number of convictions set forth on the driving record as defined in Va. Code §46.1-387.2. However, the Commissioner cannot automatically revoke on the basis of the driving record. Instead the Commissioner must certify an abstract of the record to the attorney for the Commonwealth (Va. Code §46.1-387.3) who files an information against the licensee in the proper court (Va. Code §46.1-387.4). The licensee is then served with notice and allowed to appear and present a defense. Va. Code §46.1-387.6; *Ferguson* v. *Gathright,* 485 F.2d 504 (4th Cir. 1973). After this hearing the court decides whether or not to revoke. Va. Code 46.1-387.6.

[17] Similarly, all the other cases cited by the Secretary on pages 11 through 18 of his brief involve mandatory revocation. See also *Horodner* v. *Fisher,* 382 N.Y.S. 2d 28 (1976), *appeal dismissed* ..... U.S. ....., 45 L.W. 3225 (1976).

If Love had a Virginia license instead of an Illinois license, he would have had all the necessary safeguards before his right to drive had been revoked.

II.

WHAT PROCESS IS DUE

Once it has been determined that due process applies, the question remains what process is due. *Morrissey* v. *Brewer,* 408 U.S. 471, 481, 33 L.Ed.2d 484 (1972); *Goss* v. *Lopez,* 419 U.S. 565, 577, 42 L.Ed.2d 725 (1975). The nature and quality of the prior hearing required in a specific situation is determined by a balancing or weighing of three distinct factors, set forth in *Mathews* v. *Eldridge,* 424 U.S. 319, 47 L.Ed.2d 18 (1976)*supra,* as follows:

> "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (424 U.S. at 335.)

However, this Court has consistently held that the balancing and weighing process cannot totally eliminate the basic requirement of some form of prior hearing. *Board of Regents* v. *Roth,* 408 U.S. 564, 33 L.Ed.2d 548 (1972); *Boddie* v. *Connecticut,* 401 U.S. 371, 378, 28 L.Ed.2d 113 (1971); *Fuentes* v. *Shevin,* 407 U.S. 67, 86, 32 L.Ed.2d 556 (1972).

Section 6-206 does not provide any form of pre-revocation protection. It violates the Due Process Clause on its face and as applied without a consideration of the balancing factors set forth in *Mathews.*

Nevertheless, an application of the *Mathews'* standards and method of analysis to the facts of this case is particularly instructive. It demonstrates the value and necessity of "some forms of hearing before deprivation" to protect licensees from arbitrary action. We now turn to these considerations.

A. The Interest Of The Licensee In Having Pre-Revocation Procedures That Meet The Requirements Of Due Process.

The interest of the licensee affected by the suspension or revocation of his license has been described by this Court as "important" because "Once licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood". *Bell* v. *Burson,* 402 U.S. 535, 539, 29 L.Ed.2d 90 (1971). Thus, a licensee employed as a truck driver, cab driver, bus driver, deliveryman, chauffeur or any number of other occupations in which driving a motor vehicle is an integral part of the job will lose his employment if his license is suspended or revoked because he can no longer fulfill the job requirements. Mr. Love, a truck driver, is in this category.

A licensee who is not a professional driver will also lose his job upon suspension or revocation of his license if the use of an automobile is necessary in his job (*e.g.* clergymen or salesmen who must travel from one place to another in the course of their employment) or in order to get to and from his place of employment because of lack of public transportation. The petitioner in *Bell* was in this category.

Automobiles may also be necessary for regular or emergency medical attention for the licensee or a member of his family. For example, at the time of Mr. Love's license revocation his wife was eight months pregnant.

The State of Illinois specifically recognizes that the suspension or revocation of a driver's license may cause "undue hardship" so often that the Motor Code provides for a special hearing to "relieve undue hardship" by the issuance of a restricted driving permit. Section 6-206(c)(3). However, this hearing is provided as a part of the general post-suspension or revocation hearing under §2-118, available only after a suspension or revocation becomes effective. In order to obtain this post-revocation hearing, the licensee must make a written request therefor. The Secretary has 20 days after receipt of the application in which to notify the licensee of the date that has been set for the hearing. There is no particular time by which the hearing must actually be held, the statute requiring only that it be held "as early as practical". After the hearing is held, there is no period of time specified in which the Secretary must act. In instances in which counsel for Mr. Love have represented persons at administrative hearings before the Secretary of State, a minimum of three-and-one-half months has elapsed between the filing of a request for a hearing and the rendering of the final administrative decision. The maximum time for a decision has been in excess of nine months. (App. at 15).

Significantly, the undue hardship caused by the Secretary's action is irreparable. If the suspension or revocation of a license causes a licensee to lose wages there is no way that the lost money can be recouped. In *Mathews* v. *Eldridge,* 424 U.S. 319, 47 L.Ed. 2d 18 (1976) and *Arnett* v. *Kennedy,* 416 U.S. 134, 40 L.Ed.2d 15 (1974), this Court authorized the plenary evidentiary hearing to be conducted and final administrative determination to be made subsequent to the effective date of the action only because (1), there were substantial procedures and hearings provided before the effective date and, (2), if the private interest prevailed at the time of the final administrative hearing, the individual was entitled to retroactive payments or back pay. The individual was therefore made whole for any monetary loss incurred because of the delay between the effective date of the action and the final administrative hearing. In the case at bar, the Secretary provides no procedures or hearings prior to revocation and does not make up any monetary loss suffered by licensees in cases of wrongful revocation.

If a licensee prevails at the hearing and the Secretary rescinds his order of revocation or suspension and restores the license, or if the licensee partially prevails and is awarded a restricted driving permit, the hardship caused by the initial action may even continue prospectively. If the licensee has lost his job because of the revocation, a restoration of the license does not automatically mean that there will be a restoration of employment.

The private interest present in this case is thus much greater than the private interests involved in *Mathews* and *Arnett.* In *Mathews,* if the disability recipient ultimately prevailed he received full lost benefits and was placed back on the Social Security rolls to receive future benefits. In

Arnett, the wrongfully discharged member would not only receive full back pay but would also have his job restored.

The private interest affected by the official action is unquestionably important and substantial. The impact of the failure to provide any form of due process protections prior to suspension or revocation will fall most heavily on the working poor and those in moderately paid occupations.

B. The Risk Of Erroneous Deprivation With No Prior Procedures And The Probable Value Of Having Some Procedural Safeguards.

The Secretary provides no form of pre-revocation procedures or safeguards against an erroneous revocation or the infliction of a punishment that will result in undue hardship. In this case, due process requires, at a minimum, adequate notice which tells the licensee what he is accused of and what the basis of the accusation is, the right to submit a written response to the notice, and an opportunity for an informal conference with an agent of the Secretary. These pre-revocation procedures would have significant value in lessening the risk of erroneous deprivation, as is evident from the facts of this case.

1. The Secretary was not authorized, even as an exercise of his discretion, to revoke Mr. Love's license to drive a commercial vehicle in his occupation.

On June 3, 1975, Mr. Love received a notice from the Secretary of State that his driver's license had been revoked effective June 6, 1975. The revocation purported to be pursuant to §6-206(a)(3), which provides that the Secretary may suspend or revoke the driver's license of a person who:

> Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of

> offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway.

The notice simply stated that the action had been taken as a result of:

> Your having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws. (App. at 13).

The statute must be read in conjunction with the administrative regulations promulgated pursuant thereto. The applicable part of Rule 6-206(a)(3) provides that "A person who has been suspended thrice within a ten year period shall be revoked".[18] The Secretary contends that the alleged ground on which the revocation was based was three suspensions within a ten year period. (Brief for Appellant at 6). Mr. Love's driving record, however, shows only two suspensions, both in 1969. In order for Rule 6-206(a)(3) to be applicable there has to be a third suspension.

The Secretary argues that at the time of the revocation there were grounds for the third suspension pursuant to §6-206(a)(2) and that he had merely not taken the intermediate step of making the suspension prior to invoking the revocation. (Brief for Appellant at 6). The question is not whether the Secretary must take the "intermediate step" of suspending a third time before revocation; rather, the question is whether grounds existed for the total suspension of Mr. Love's license under §6-206(a)(2) and, therefore, for the total revocation under §6-206(a)(3). In fact, such grounds did not exist.

[18] We assume for purposes of this discussion that it is the driver's license and not the person who is suspended and revoked.

Section 6-206(a)(2) gives discretionary authority to the Secretary to suspend the driver's license of a person who:

> Has been convicted of not less than 3 offenses against traffic regulations governing the movement of vehicles with the exception of those offenses excluded under the provisions of Section 6-204(2), committed within any 12-month period so as to indicate the disrespect for traffic laws and a disregard for the safety of other persons on the highways; conviction upon 3 charges of violation of Section 11-601 of this Act committed within a period of 12 months shall be deemed grounds for the revocation or suspension of a license or permit under this Section, provided that no such revocation or suspension shall be entered more than 6 months subsequent to the date of conviction of the 3rd offense.

But, this section is specifically qualified by §6-206(c)(2), which provides:

> If the Secretary of State suspends or revokes the license of a person under sub-paragraph 2 of paragraph (a) of this Section, *a person's license to drive a commercial vehicle only as an occupation shall not be revoked or suspended unless five offenses were committed,* at least 2 of which occurred while operating a commercial vehicle in connection with his regular occupation. (Emphasis added).

Mr. Love is a truck driver. He needs a license to drive a commercial vehicle in his occupation. Within the year prior to the revocation, Mr. Love had not been charged with five violations. He specifically came within the provisions of (c)(2).

Thus, the suspension of Mr. Love's license to drive a commercial vehicle was not authorized under §6-206(a)(2).

Since the Secretary's authority to revoke under sub-section (a)(3) is dependent on the authority to suspend under sub-section (a)(2), the Secretary did not even have the discretionary authority to revoke Mr. Love's license to drive a commercial vehicle.

The fact that Mr. Love had a commercial license is evident on the records administered by the Secretary. Mr. Love has a Class D license. (App. at 10). This classification authorizes the holder to drive any motor vehicle except motorcycles. A Class D license is required to drive semi-trailer and tractor trailer vehicles.

Any of the procedures set forth above would have obviated the above error. In particular, the notice should have informed Mr. Love that the revocation was based on a simultaneous suspension under sub-section (a)(2) and advised him of his rights under (c)(2).

2. Under the present procedures there is no means to correct even clerical errors. The notice of revocation says that "action has been taken as a result of: Your having been repeatedly convicted of offenses . . .". (App. at 10). How many offenses? When were the offenses committed? How many offenses are required before action may be taken? Is the record accurate?

Answers to these questions are necessary for the licensee to determine if a defense exists. They are not answered by the notice. There is no way to respond to such notice. There is no way for the licensee to protect himself against even clerical error. The notice is grossly inadequate.

3. One question present in Mr. Love's case was whether he had "disrespect for the traffic laws". In order for this question to be accurately determined by the Secretary, he must hear Mr. Love's side. Disrespect cannot be determined by the number of traffic tickets alone. At the very least, disrespect is a function of the relationship between the number of violations to the number of miles driven. This concept is implicit in sub-section (c)(2) which allows commercial drivers five violations instead of three over the same time period before suspension.

California explicitly recognizes this concept by providing that in determining whether to suspend or revoke a license for such reasons as three accidents in a year "the department shall give close consideration to the amount of use or mileage traveled in the operation of a motor vehicle". Cal. Veh. Code §138-2. The only way this vital information can be made known to the Secretary is from the licensee, by written or oral responses to the notice.

4. If the licensee had the opportunity to respond and be heard, he could submit mitigating factors that may accompany the traffic citations. Such factors include whether or not the citation arose out of an accident involving personal injury or property damage. Other factors include traffic or weather conditions. Did the offense arise at a non-peak traffic period as compared to a peak period? Did the offense occur in a snow storm or in dry pavement conditions? Speeding ten miles over the limit on an uncrowded highway is less severe and less dangerous to the safety of others than speeding ten miles over the limit in a school zone. Similarly, speeding on dry pavement under good visibility conditions is less severe and less dangerous to the safety of others than speeding by the same amount in a snow storm. Although the Secretary cannot go behind the conviction, he must consider the severity of the circumstances. Rule 6-206(a). This information can only come from the licensee. Such factors are pertinent to both the question of whether to take initial action and, if so, the penalty to be imposed.

5. Section 6-206(c)(3) authorizes the Secretary to issue a restricted driving permit to "relieve undue hardship" caused by the suspension or revocation. The information concerning the hardship (family health needs, transportation to and from employment, lack of adequate public transportation in particular communities) can only come from the licensee. With prior procedural safeguards, such hardships could be made known to the Secretary and particular relief could be tailored to meet the need.

6. Section 6-206 authorizes the suspension or revocation of a license, "without preliminary hearing" for twenty different reasons. Mr. Love's license was revoked pursuant to sub-section (a)(3). Persons whose licenses were revoked or suspended for any of the other reasons would similarly benefit from adequate due process protections. Many of the other grounds are clearly susceptible to basic factual differences between the Secretary and the licensee, such as:

5. Has permitted an unlawful or fraudulent use of such license or permit;

8. Is ineligible for such license or permit under the provisions of Section 6-103 of this Act;

9. Has made a false statement or knowingly concealed a material fact in any application for a license or permit;

10. Has displayed or represented as his own any license or permit not issued to him;

12. Has submitted to an examination or has obtained the services of another person to submit to an examination for the purpose of obtaining a drivers license or permit for some other person;

16. Has violated Section 11-204 of this Act relating to fleeing from a police officer.

The factual questions relating to these issues can only be resolved by a full exchange of information and an oral conference.

The constitutional problem with §6-206 is that, despite its recognition of the need for a plenary post-revocation evidentiary hearing, it allows the revocation to initially take place without any kind or manner of preliminary hearing. Plaintiff does not argue that a full evidentiary hearing must take place prior to revocation. However, the fact that such a hearing is required or necessary in the revocation process requires that there be some type of pre-revocation hearing or proceeding.

In *Mathews* and *Arnett*, substantial procedures and hearings were provided prior to the effective date of the action. In discussing this factor to determine the specific dictates of due process, this Court was dealing with situations in which the already existing procedures would probably catch most improper actions. This Court was attempting to determine the relative value of additional procedures when the existing procedures had failed. Nothing like that exists in the case at bar. There are no prior procedures.

As we have shown above, the right to an adequate notice and the opportunity to be heard prior to revocation would have substantial value in preventing erroneous decisions and undue hardship. The failure of the statute in question here to provide any pre-revocation protection violates due process.

C. The Interest Of The State In Revoking Licenses Without Any Of The Requirements Of Due Process.

The third criteria is the government's interest. The only governmental interest claimed by the Secretary is to protect the general welfare by removing unsafe drivers from

the highway. Due process is not antagonistic to this concept.[19]

The interest of the State of Illinois in suspending or revoking drivers' licenses is no different from that of the other states. Many states have developed statutes and administrative procedures which give licensees adequate procedural safeguards prior to the suspension or revocation of a license. The details of these procedures will be discussed in the following section. In light of the action taken by a substantial number of states in the identical situation, it is extremely difficult for the Secretary to maintain a governmental interest so overriding that it calls for the complete suspension of the Due Process Clause.

III.

STATUTES AND PROCEDURES EMPLOYED BY OTHER STATES DEMONSTRATE THAT WORKABLE ALTERNATIVES EXIST WHICH PROTECT GOVERNMENTAL INTERESTS AND PROVIDE ADEQUATE PROCEDURAL SAFEGUARDS.

Reconciling due process and highway safety is not difficult. Other states recognize the serious consequences that flow from license suspension or revocation and offer meaningful opportunities for licensees to contest or otherwise respond prior to a proposed suspension or revocation. Some progressive states even promote highway safety by establishing procedures for driver rehabilitation and improvement within the license suspension and revocation process.

In the present case, Mr. Love prays that the present Illinois statute and administrative procedures be declared unconstitutional and that the state be required to provide

[19] See discussion above at p. 20.

notice and an opportunity for a hearing prior to the discretionary suspension or revocation of a driver's license. He is not asking this Court to draft and impose upon Illinois a specific scheme. But it is useful to examine the statutes and administrative procedures developed by other states in order to demonstrate workable alternative methods of compliance with due process requirements.

Maryland authorizes the discretionary suspension or revocation of a driver's license for exactly the same reason as in the case at bar. However, in Maryland this happens only "after due hearing." Md. Ann. Code Art. 66½, 6-206, which provides in part that:

> The Department may suspend or revoke a license after due hearing, upon showing by its record or other sufficient evidence that the licensee:
>
> (1) Is either an unfit or unsafe driver.
>
> (2) Has been convicted with such frequency of violations of the traffic regulations governing the movement of vehicles as to indicate an intent to disregard the traffic laws and the safety of other persons on the highways . . .

A licensee is given 15 days' notice of the Department's proposed action. The notice clearly and explicitly notifies the licensee of his rights and how to obtain them. If, during that time, the licensee requests a hearing, the suspension or revocation is stayed until the hearing is concluded.

The licensee's exercise of his right to a hearing is made particularly simple and efficient by allowing him to merely check a box on the notice itself. A copy of a form Maryland Department of Transportation Notice of Revocation is reproduced herein as Appendix A.[20]

[20] The notice should be improved by providing more detailed information as to the facts relied on by the Department.

In Wyoming, a licensee is entitled to a full evidentiary hearing before a discretionary suspension or revocation. The Wyoming Motor Vehicle Division is authorized by Wyo. Stat. Sec. 31-276.26(b) to:

> Suspend the license of any driver for a period not to exceed 12 months, upon a showing by its records or other sufficient evidence that the licensee:
>
> > (i) Is an (sic) habitually reckless or negligent driver of a motor vehicle, such fact being established by a record of moving violations, accidents or other evidence. . . .

However, Wyo. Stat. §31-276.26(c) requires that:

> Before suspending or revoking the license or driving privilege of any person as authorized in this section, the division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within 20 days after receipt of the request at a time and place specified by the division. Upon the hearing, the motor vehicle director or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers in accordance with the Wyoming Administrative Procedure Act (§§9-276.19 to 9-276.33) and may require a re-examination of the licensee . . .

The licensee is thus given 20 days to request a hearing. Such a request stays the suspension until all administrative and judicial review of the matter is completed.

The notice of proposed suspension or revocation lists all the traffic convictions assessed to the licensee by date, charge, and place. The notice also advises the licensee that "Limited driving privileges can be granted on a showing of sufficient cause." A copy of an actual notice from the Department of Revenue and Taxation, Motor Vehicle Division, with the name of the licensee deleted, is attached hereto as Appendix B.

In Texas, the procedure for the suspension or termination of a license for such reasons as four traffic convictions in a 12-month period or seven traffic convictions within 24 months is set forth in Tex. Rev. Civ. Stat. Art. 6687b, §22. When the Department of Public Safety determines that grounds exist for the suspension or revocation of a license, it must file a Petition for Administrative Hearing in a police court or before a justice of the peace. Summons is served on the licensee and a full evidentiary hearing is held. The court determines whether the license shall be suspended or revoked and, if suspended, the length of suspension. Upon a decision favorable to the Department, the licensee may appeal to the county court for a trial *de novo*. This trial is also a full evidentiary hearing and may be by jury. Tex. Rev. Stat. Art. 6687b, §31. Any suspension or revocation is stayed pending the second trial.

The form of Petition for Administrative Hearing is attached hereto as Appendix C. The second page of the petition itemizes the alleged traffic convictions.

Ohio also provides for a full evidentiary hearing before an independent judicial officer. The licensing authority has the power to suspend a license upon the accumulation of a certain number of "points" over a specified period of time. Ohio Rev. Code Ann. §4507.40. The licensee must be given 20 days advance notice of the suspension, during which time he may petition the municipal court for a hearing. Ohio Rev. Code Ann. §4507.40(k). At the hearing, the court decides whether the license should be suspended "upon the record certified by the registrar and any additional relevant, competent, and material evidence" submitted by either the licensee or registrar. Ohio Rev. Code Ann. §4507.40(o).

Colorado requires a full evidentiary hearing prior to the discretionary suspension of a license. The department has

authority to suspend a license based on the number of "points" accumulated. Colo. Rev. Stat. §42-2-123. However, "No suspension . . . shall be made until a hearing has been held in accordance with the provisions of this section." Colo. Rev. Stat. §42-2-123(1)(d). The Colorado prior hearing is identical to the Illinois post-revocation hearing, including subpoena power and testimony under oath. Compare Colo. Rev. Stat. §42-2-123(1) with Ill. Rev. Stat. Ch. 95½, §2-118(c).

California provides that when the department "proposes to revoke or suspend the driving privilege of [a] person," it must give the licensee "notice and an opportunity to be heard . . . before taking the action." Cal. Veh. Code §13950. The licensee has the choice of a formal or informal hearing. Cal. Veh. Code §14100. A copy of the form Department of Motor Vehicles Notice of Proposed Action is reproduced herein as Appendix D.

South Dakota authorizes the Department of Public Safety to suspend a license "only after an opportunity for hearing" when the licensee, *inter alia*:

> Appears from the records of the department to be an habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws [and/or] municipal ordinances. . . . S.D. Compiled. Laws Ann. §32-12-49.

Although the Iowa statute facially allows suspension of a license without preliminary hearing, the licensee must be given "twenty days advance notice of the effective date of the suspension." During that time he may petition for judicial review, which "shall operate to say the suspension pending the determination by the district court." Iowa Code §321.210.

The Michigan statute requires the licensing authority to give prior notice and hearing to the licensee before suspending or revoking his license when, *inter alia*, the basis of the suspension is an accumulation of points based upon a statutory schedule. Mich. Comp. Laws §257.320. The Notice of Driver Improvement Hearing sent to the licensee provides:

> The purpose of this hearing is to discuss your driving performance and to determine whether licensing action is appropriate. You will have an opportunity to review your record, discuss your driving performance, and present related information.

A copy of the said notice is reproduced herein at Appendix E.

North Dakota authorizes a discretionary suspension of a license only "after hearing, upon proof by a fair preponderance of the evidence . . ." N.D. Cent. Code §39-06-32.

Virginia provides for the suspension or revocation of a license under two separate statutes. Va. Code §46.1-387 is the "habitual offender" act and provides for suspension or revocation of a license only after a judicial determination. See discussion above at p. 32. Va Code §46.1-430 provides for the discretionary suspension of a license "after the hearing . . . conducted by the Commissioner" for specified charges. The notice of the hearing shall contain:

> (1) A specific statement of the alleged offense or offenses or other grounds for suspension or revocation of the license, including the date, time and place thereof when applicable;
>
> (2) The date, time and place of the hearing;
>
> (3) The names and addresses of all known witnesses whose testimony is proposed to be taken at the hearing;
>
> (4) As to any record of conviction of any offense which is to be offered as evidence, the date of such conviction and the court in which the same was had.

(b) If these requirements are complied with it shall be sufficient regardless of whether or not the licensee appeared and regardless of whether or not the notice was ever received. (Va. Code §46.1-431)

The hearing shall be conducted in accordance with the rules of evidence, including the right to cross-examine adverse witnesses. Va. Code §46.1-433.

Another group of states has recognized that the problem of poor drivers cannot be cured merely by suspension or revocation for a given length of time. They provide hearings or conferences prior to suspension or revocation wherein an opportunity for counseling and rehabilitation is provided to the licensee.

Kentucky authorizes its licensing department to suspend a license with or without a prior hearing under a variety of circumstances. Ky. Rev. Stat. §186.570, but the licensing department has opted to adopt administrative procedures which protect the interest of the licensee in maintaining his driving privileges by requiring that the individual receive a hearing prior to suspension. Bureau of Vehicle Regulation No. 9. The state's interest in improving the driving habits of its licensees is promoted by regulations 4(1) through 4(3). These detailed regulations require the individual to attend an interview with a "driver improvement officer for the purpose of seeking a solution to his errant driving behavior." Bureau of Vehicle Regulation No. 4(1). This conference occurs when the individual begins to accumulate significant numbers of penalty points. The driver improvement officer has the authority to require the individual to attend a driver improvement clinic and, as an additional incentive, upon completion of the clinic, some of the points previously accumulated are removed from the driver's record. A copy of the Kentucky regulations and the driver improvement interview notice are reproduced herein as Appendix F.

The Kentucky statute and administrative procedure demonstrates an approach which recognizes governmental interests in highway safety by encouraging rehabilitation while retaining authority to remove poor drivers. This sophisticated approach recognizes that mere suspension or revocation, by itself, for specified periods of time is not an adequate response to the problem of highway safety.

The State of Washington has also adopted such an administrative driver rehabilitation procedure in conjunction with its prior hearing statute. Wash. Rev. Code §§46.20.291 and 46.20.322 provide for prior hearings. Unnumbered internal administrative procedures discuss the driver rehabilitation aspects of the program. As stated in these regulations:

> A common misconception is that the department arbitrarily suspends a driver's license on the basis of point accumulation. Normally, the driving privilege is not suspended unless the driver has had an opportunity for at least one personal contact with a departmental representative. It is felt that arbitrary suspension is ineffective as a means of driver rehabilitation. Driver Improvement clinics of various types are made available when experience and research indicates that they are worthwhile. This is part of a continuing effort to help the problem driver correct his driving before he gets to the point of being suspended.

This policy is implemented in the Washington regulations as follows:

> The purpose of the interview contact is to point out to the driver the consequences that can stem from having a poor driving record. Younger drivers who have a higher likelihood of driving problems because of aggressive driving behavior are given an opportunity to identify the causes of their driving errors and outline methods of correcting them. Older drivers

who normally have a higher likelihood of being preoccupied while driving are shown a technique to overcome that preoccupation. All drivers attending interviews have a control status period of time. If the driver continues violating during that control period, a follow-up action is taken if the driver is on probation, suspension of the license is the next action taken.

The Washington regulations are reproduced herein as Appendix G.

CONCLUSION

For the reasons stated herein, the appellee respectfully requests that this Court affirm the finding and order of the district court.

Respectfully submitted,

ALAN M. FREEDMAN
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Attorneys for Appellee

APPENDIX

APPENDIX A

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

Harry R. Hughes
Secretary
Elmer J. Johnson
Administrator

CERTIFIED MAIL

Notice Date

NOTICE OF REVOCATION

As required by the Vehicle Laws of Maryland, Art. 66½ Sec. your driving privilege in this state will be Revoked on as a result of

A written request for a hearing, made within Fifteen (15) days of this notice, will delay the revocation until a hearing is concluded.

In the event a hearing is not requested, your privilege will be Revoked and your Maryland driver's license must be returned to this office on the revocation effective date.

An application for reinstatement will be issued on written request from the date your license is received; however your driving privilege cannot be restored until the revocation period has terminated.

SAMPLE COPY

Driver Improvement Section

SIGN AND RETURN THIS LETTER WITH THE APPLICABLE SECTION CHECKED:

☐ I hereby request a hearing.

☐ I waive my right to a hearing. I am returning my license herewith. _____
SIGNATURE

App. 2

APPENDIX B

STATE OF WYOMING
THE DEPARTMENT OF REVENUE AND TAXATION
2200 Carey Avenue
Cheyenne, Wyoming 82002
4/11/74

NAME
AND
ADDRESS.

Driver License No. 1573253061
Class C Type
Date of Birth JUNE 7,1951
3190

ORDER OF SUSPENSION OF DRIVER LICENSE

Your Wyoming driver license file shows the following convictions for moving traffic violations since the beginning of SEPTEMBER, 1974.

9/07/73	SIGNS & CONTROL DEVICES	CASPER
10/14/73	TURNS	CASPER
7/30/73	SPEEDING	CASPER
2/10/74	SIGNS & CONTROL DEVICES	CASPER

The Motor Vehicle Division finds that the above listed convictions show you to be an habitually reckless or negligent driver and that your driving privileges should be suspended for a period of ____ _____.

It is, therefore, ordered by the Motor Vehicle Division, of The Department of Revenue and Taxation, State of Wyoming, that driver's license no. 1573253061 issued to the above named person is hereby suspended for a period of _____ commencing 20 days after the date of this order on May 3, 1974.

Demand is hereby made for the surrender to the Motor Vehicle Division of your driver's license ow

You may, within 20 days of the date of this Order, demand a hearing upon this matter. Such demand shall be in writing, addressed to the Motor Vehicle Division, 2200 Carey Avenue, Cheyenne, Wyoming 82002. Such demand shall stay the suspension until all administrative or judicial review of this matter is completed. Such hearing, if demanded, shall be before The Department of Revenue and Taxation Hearing Examiner in the County of your residence.

DATED at Cheyenne, Wyoming, this ELEVENTH, day of APRIL, 1974.

_____
Director
Motor Vehicle Division

Limited driving privileges can be granted on a showing of sufficient cause. Application should be made in writing to the Motor Vehicle Division.

App. 3

APPENDIX C

DIC-18 (Rev. 6/74)

PETITION FOR ADMINISTRATIVE HEARING
Article 6687b, R.C.S., Section 22

TEXAS DEPARTMENT OF PUBLIC SAFETY
vs
_____

DOCKET NO. _____
BEFORE THE JUDGE OF THE _____ COURT,
_____, COUNTY, TEXAS.

TO THE HONORABLE JUDGE:

NOW comes the State of Texas, acting by and through Wilson E. Speir, Director of the Texas Department of Public Safety, hereinafter called Plaintiff, and files this its first original petition herein:

COMPLAINING OF _____, hereinafter called Defendant, who resides in _____, _____, County, Texas, and for its allegations and cause of action against said defendant will allege and state the following matters and facts, to-wit:

THAT, defendant was issued _____ License No. _____ on the _____ day of _____, 19 ____, by the Texas Department of Public Safety;

THAT, defendant is an habitual violator of the traffic law, to-wit:

THAT, defendant has four (4) or more convictions arising out of different transactions in a consecutive period of twelve (12) months, or seven (7) or more convictions arising out of different transactions within a period of twenty-four (24) months, such convictions being for moving violations of the traffic laws of this State or its political subdivisions.

WHEREFORE, premises considered, plaintiff prays the Judge for an affirmative finding in his favor and judgment authorizing the suspension of defendant's aforementioned license and defendant's privilege to operate a motor vehicle in the State of Texas for a period of time not to exceed one year.

Wilson E. Speir

Wilson E. Speir, Director
Texas Department of Public Safety

BE IT REMEMBERED that on the _____ day of _____, 19 ____ came on for hearing and was heard in the above entitled and numbered cause.

WHEREUPON the Judge is of the opinion and so finds that the law and the facts are with the plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff do have and recover of said defendant an affirmative finding, as prayed for in the petition, and that defendant's _____ License No. _____ and driving privileges be suspended for a period of _____ months as provided in Article 6687b, R.C.S., Section 22.

_____, JUDGE
_____, COURT
_____, COUNTY,
STATE OF TEXAS

App. 4

STATE OF TEXAS I

COUNTY OF TRAVIS I

Pursuant to the authority contained in Article 3731a, V.C.S., and Section 3 of Article 6701h, V.C.S., I, John H. Grant, do hereby certify that I am a deputy c[illegible] of driver records of the Driver and Vehicle Records Division of the Te[illegible]ment of Public Safety.

This is to further certify that notices of convictions for the following moving traffic law violations and incidents of motor vehicle accident involvement have been received and recorded, along with official action by the Department of Public Safety, in the computer records of
as described hereinabove:

In Testimony Whereof, I hereunto set my hand and affix the Seal of the Department of Public Safety of the State of Texas. Done at my office, in the City of Austin, this_____day of_____ A.D., 19____.

John H. Grant, Manager
Driver Improvement and Control Bureau
Driver and Vehicle Records Division
Texas Department of Public Safety

DIC-116

App. 5

APPENDIX D

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
DIVISION OF DRIVERS LICENSES

NOTICE OF PROPOSED ACTION, GROUNDS THEREFOR, AND OF OPPORTUNITY TO BE HEARD.

(Name and address of licensee)

Driver's License or File Number _____

Field File _____

☐ cc: Guarantor

Our records show that

(Grounds for hearing)

You are hereby notified that because of such record, this Department proposes to suspend or revoke your driving privilege or to place your privilege on probation as provided in Sections 12809, 13359, 13950–52 of the Vehicle Code.

You are entitled to a hearing to present any evidence, oral or written, as to why the Department should not take the proposed action. You have the choice of a formal or informal hearing. In either type of hearing, you may present any evidence on your behalf. You are not required to be represented by legal counsel, but your attorney may be present if you wish. In the formal hearing, a complete written record is made of the entire proceedings and is available for review.

An informal hearing has been scheduled by the Department of Motor Vehicles, to be held at

A Driver Improvement Analyst will act as referee at the informal hearing.

A formal hearing, if requested, will be scheduled in place of the informal hearing.

You may respond to this notice either through appearance at the informal hearing or by demanding a formal hearing prior to the date of the informal hearing. Failure to respond to this notice is a waiver of the right to a hearing, and the Department may take action without hearing as authorized in Section 14103 of the Vehicle Code. Please bring to the hearing any unexpired driver's license which has been issued to you.

DIVISION OF DRIVERS LICENSES
Sacramento, CA 95812

CERTIFICATE OF MAILING

The undersigned hereby certifies that, on the date below, he or she, as an officer or employee of the Department of Motor Vehicles, deposited in the United States Mail, at Sacramento, a copy of the paper to which this is affixed, in an envelope, with postage prepaid, addressed to the person named in the paper, at his or her last address as shown by the records of the Department.

_____ Date

_____ Officer or Employee of Department

DL 1080 (REV. 12-79)

APPENDIX E

Michigan Department of State
BUREAU OF DRIVER IMPROVEMENT
LANSING, MICHIGAN 48918

NOTICE OF DRIVER IMPROVEMENT HEARING

From records reported to this office, it appears that:

For the above stated reason you are required to appear for a hearing with a driver analyst on:

Date _____ Time _____

Place

The purpose of this hearing is to discuss your driving performance and to determine whether licensing action is appropriate. You will have an opportunity to review your record, discuss your driving performance, and present related information.

If you are under 18 years of age, a parent or guardian should appear with you.

If medical statement forms are attached, please have them completed and present them at the hearing.

You may be given a road test. This means you will need a motor vehicle in safe driving condition, proper vehicle registration and valid proof of insurance.

Dated this date _____

Paul Bertram

Paul Bertram, Director
Re-examination Division
Bureau of Driver Improvement

YOUR FAILURE TO APPEAR WILL NOT PREVENT THE DEPARTMENT FROM REVIEWING YOUR RECORD AND TAKING APPROPRIATE ACTION CONCERNING YOUR DRIVING PRIVILEGE. SUCH ACTION MAY INCLUDE SUSPENSION OR REVOCATION.

Authority granted under Act No. 300 of the Public Acts of 1949, as amended.

DI-1 - (7/79)

APPENDIX F

DEPARTMENT OF TRANSPORTATION

Bureau of Vehicle Regulation

Relates to KRS 186.570

Pursuant to KRS 13.082

Necessity and Function: This regulation is the so-called "point system" whereby each traffic violation conviction is assigned a certain number of points, according to the seriousness of the offense, as determined by accident-cause statistics. Certain offenses have proven so dangerous that they, along with certain license violations, are made cause for suspension periods rather than point accumulation. The purpose of this is to establish a criterion whereby the discretion allowed in determining the "habitually reckless or negligent driver" or the "serious violation" will not be exercised arbitrarily and capriciously, but each license holder will be treated like every other one, and each will know or can determine his "point" status at any given time.

Supersedes: Psfty-DI-4, Psfty-DI-5-2, Psfty-DI-9, Psfty-DI-10 and Psfty-DI-11

Section 1. To assist the Department of Transportation in making a determination that a person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws for the purpose of denying, suspending, or revoking that person's license in accordance with KRS 186.570 a schedule of penalty points shall govern. Value points for the different classifications of moving hazardous violations, or a suspension period of certain named violations, shall be assessed as

set out in Sections 2 and 3 of this regulation for all drivers. Points shall be assessed or suspensions invoked for convictions, forfeiture of bail, or payment of fines, with or without a court appearance, for the enumerated offenses regardless of whether the conviction is received from a court of competent jurisdiction within the Commonwealth of Kentucky or in any other jurisdiction (except for out-of-state speeding offenses). Information regarding convictions may be secured from any official sources or records available to public or departmental inspection. Complete records of suspensions and point system assessments shall be maintained in the Department of Transportation.

Section 2. Conviction for any one of the following serious violations of the motor vehicle laws shall be cause for suspension for the period of time indicated:

Racing	90 days
Speeding 26 MPH or more over limit	90 days
Attempting to Elude Law Enforcement Officer by use of Motor Vehicle	90 days

Section 3. Conviction for any one of the following Moving Hazardous Violations shall be cause for assessment of the penalty points indicated:

Speeding 15 MPH or less over the limit	3 pts.
Speeding 16 MPH or more, but less than 26 MPH, over the limit	6 pts.
Improper passing	5 pts.
Reckless Driving	4 pts.
Driving on Wrong Side of Road	4 pts.
Following Too Close	4 pts.
Failure to Yield to Emergency Vehicle	4 pts.
Changing Drivers in a Moving Vehicle	4 pts.
Vehicle Not Under Control	4 pts.
Stop Violation (electric signal, railroad crossing, stop sign)	3 pts.
Failure to Yield	3 pts.

Wrong Way on One-Way Street	3 pts.
Too Fast for Conditions	3 pts.
Too Slow for Conditions	3 pts.
Improper Start	3 pts.
Improper Driving	3 pts.
Careless Driving	3 pts.
Improper Lane Usage	3 pts.
Failure to Illuminate Headlights	3 pts.
Failure to Dim Headlights	3 pts.
Any other Moving Hazardous Violations	3 pts.
Commission of a Moving Hazardous Violation which involves an Accident	6 pts.
Combination of Two or More Moving Hazardous Violations in any one occurrence	6 pts.

Section 4. (1) On the accumulation of six (6) or more points against any driver the Department of Transportation may send a letter to the address shown on his driver license record that will require said driver to be interviewed by a Driver Improvement Officer for the purpose of seeking a solution to his errant driving behavior. Failure to report for the interview shall be cause for the Department to suspend the person's driving right for a period of not less than thirty (30) days.

(2) After this interview, the Department may require the driver to attend a Driver Improvement Clinic approved by the Department of Transportation.

(3) Upon evidence to the Department that a valid license holder has successfully completed this Clinic, a four (4) point credit shall be given on the driver record of those who voluntarily complete the Driver Improvement Clinic after the effective date of this regulation. This subsection shall not apply when a driver is required to attend the Driver Improvement Clinic as a condition of his probation.

(4) No driver shall be permitted to attend this Clinic until two (2) years have elapsed following the date of com-

pletion of a previous clinic for the reduction of points or reduction of a suspension period.

Section 5. (1) Upon the accumulation of twelve (12) points by any driver within a period of two (2) years, the Department may suspend the operating right of such driver for a period of six months for the first such accumulation of twelve (12) points, one year for the second such accumulation of twelve (12) points, and two years for any subsequent accumulation of twelve (12) points within the two year period.

(2) For any violation for which the suspension of the driving privilege is six months or less for the first offense, the second conviction of a similar offense shall result in a suspension period of not less than one year, and any subsequent conviction for any similar offense not less than two years.

(3) Provided the driver is eligible for "probation", the Department may waive the remainder of a driver's suspension period after he has served one-half of it. Upon this waiver, the Department shall place the driver on "probation" as outlined in Section 6(2) of this regulation, for two times the amount of time remaining on the suspension period.

Section 6. (1) Any driver who accumulates twelve (12) points or more within a period of two years, or who is convicted of any offense that could result in a discretionary suspension, may be placed on "probation" in lieu of suspension.

(2) A driver receiving a conviction from a moving hazardous violation from any court outside the boundaries of Kentucky which may result in a suspension shall be offered a hearing prior to any suspension of his driving right.

(3) "Probation" for the purpose of this regulation means that upon any additional future conviction for a moving violation with or without court appearance, or upon failure to successfully complete the Driver Improvement Clinic, the driver shall have his driving right in Kentucky suspended for the period of time outlined in Section 5 (1) and (2). In the situation where a driver has been convicted of driving under the influence of intoxicants in a foreign jurisdiction, probation may include successful completion of the alcohol driver education course in lieu of terms previously stated.

(4) Once a driver has been placed on "probation" by the Department, he shall not be considered for probation again until a lapse of two years from the ending date of any previous probation period granted, whether served or not.

Section 7. Any driver who holds a valid driver's license from another licensing jurisdiction and desires to become a valid license holder in Kentucky, upon establishing residency in this state, but has a driving record of two or more convictions for moving violations within the preceding two years, may be considered for an operator's license in Kentucky. However, such person must not be under suspension or revocation by any state at the time of his application in Kentucky. This driver applicant may be required to appear for an interview, as outlined in Section 4 (1), and may be required by the Department to successfully complete a Driver Improvement Clinic, as outlined in Section 4 (2), as a prerequisite to obtaining a permanent Kentucky Operator's license.

Section 8. Whenever a conviction report is used for a suspension or probation, it shall never be used for an additional suspension. It may be used to show that the driver has previously been suspended on his record.

Section 9. No person's driving right will be suspended under any section of this regulation without his first being offered a hearing.

ADOPTED: .....

Approved as to form and legality:

.....

Bruce K. Davis, Attorney

TD 94-2
Rev. 4-73

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF TRANSPORTATION
FRANKFORT, KENTUCKY 40601
BUREAU OF VEHICLE REGULATION
O. B. ARNOLD
COMMISSIONER

JOHN C. ROBERTS
SECRETARY

JULIAN M. CARROLL
GOVERNOR

Information has been received that you have violated the Motor Vehicle Laws to the extent that your right to operate a motor vehicle could be suspended.

In accordance with the authority vested in the Department of Transportation by Chapter 186.400, [illegible].570, and the Kentucky Point System, you are hereby direct[illegible]o appear at the:

The Driver Improvement Officer will have your driving record and will be able to answer any questions that you may have. If you keep your appointment, he will do everything within his power to help you retain your right to drive.

SHOULD YOU FAIL TO APPEAR, YOUR RIGHT TO OPERATE A MOTOR VEHICLE WITHIN THIS STATE WILL BE WITHDRAWN.

Authorized by the Director
Division of Driver Licensing
Phone (502) 564-6800

APPENDIX G

DRIVER IMPROVEMENT PROGRAM

ALCOHOL CONTROL—All drivers who have two citations or collisions on their driving record, with an indication that they consumed intoxicating alcohol previous to the incident, are scheduled for the sessions. During the course of the session they discuss information that related to blood alcohol level, risk of collision and penalties for further infractions. Alternatives to drinking and driving are also explored. At the conclusion of the interview the driving privilege for each driver attending is placed on a 24 month probationary status.

BEHAVIORAL ANALYSIS—Drivers between the ages of 16 and 30 who accumulate four moving citations in a 12 month period or five in a 24 month period are scheduled for this program. The session is designed to inform drivers about the consequences that may arise if their violation pattern continues. Factors such as collision risk, financial implications and inconvenience are discussed. Drivers are also given the opportunity to identify the causes of their driving errors and to outline methods that they will use to eliminate those errors in future driving. At the conclusion of the interview, all drivers are formally placed on a 6-month probationary status.

HABITUAL OFFENDER—The Habitual Offender Law which became effective August 9, 1971, stipulates that certain drivers may be declared "habitual offenders" by Superior Court. Upon such a finding by the court, the Department issues an order of license revocation for a five year period. To qualify for such action the driver must accumulate either 20 moving violations within a five year period, or three "mandatory" convictions. These mandatory convictions consist of: drunken driving, hit and run, negligent homicide and driving while suspended. The driver who is revoked under terms of the Habitual Offender Law may petition the Department for reconsideration of the revocation after a two year period.

IMPLIED CONSENT—Any driver who operates a motor vehicle on the public highways in Washington is deemed to have given consent to take a breathalyzer test. In order for the provisions of this law to be invoked, certain conditions must be met:

a. The driver must have been arrested.

b. The officer must have reasonable grounds to believe the driver operated or was in physical control of the motor vehicle upon the public highways while under the influence of intoxicating liquor.

c. He must advise the driver that his refusal to take a breathalyzer test will result in revocation or denial of his driving privilege.

d. The driver must be advised of the right to take additional tests administered by a qualified person of the driver's choosing and at the driver's expense.

e. It must be substantiated that the driver did in fact refuse to take the test.

If these conditions are met and the arresting officer submits a notarized affidavit to the effect that the above conditions were met, an order revoking the driving privilege for six months is issued. If the driver feels that the above conditions were not met, he may request an administrative hearing to determine the matter. If the departmental hearing results in a finding against the driver, he may file notice of appeal with Superior Court within 30 days after he receives the new revocation order.

MEDICAL RESTRICTION PROGRAM—If there is any indication that a driver is subject to a mental or physical condition that might impair driving ability, documentation of the condition in the form of a Certificate or Physical Examination must be submitted. On the certificate, the physician indicates the severity of the condition and registers his opinion on whether the driver should have further examinations on a periodic basis in order to retain a license. If his physical condition warrants it, the driver may be required to submit such certificates on a continuing basis.

NARRATIVE DRIVING—Drivers who are age 31 or older, who accumulate four moving citations in a 12 month period or five in a 24 month period are scheduled for these sessions. Because of the high probability of pre-occupation or poor seeing habits being a factor in these drivers performance, they are shown and given practice in a technique referred to as "Narrative Driving". At the conclusion of the interview all drivers are placed on a 6 month probationary status.

RE-EXAMINATION AND SPECIAL EXAMINATION—Drivers are selected for re-examination in a number of ways. Often they are referred to the Department of courts and enforcement agencies. On occasion members of the family or acquaintences will document the need for retesting and a large number of re-examinations are generated within the Examining Division as the result of their contact with drivers who wish to renew their license. The re-examination is conducted for the purpose of reassuring the drivers and the Department that anyone who holds a Washington license has a satisfactory ability to operate a motor vehicle in accordance with safety standards and legal guidelines. If a driver cannot satisfactorily complete re-

examination, they are referred for a special examination. Quite often the driver who cannot qualify on a standard re-examination can retain a portion of their driving privilege through use of an area or equipment restriction.

DEPARTMENT OF MOTOR VEHICLES
STATE OF WASHINGTON

POINT SCHEDULE

Each bail forfeiture or court conviction for a traffic violation is placed on the driver's record and assigned a certain number of points according to the point schedule. When the violator has accumulated 12 or more points within a 12-month period, a warning letter is sent.

Beyond the warning letter stage, a probability of collision involvement becomes more significant than point accumulation in identifying problem drivers. Any driver who accumulates four or more record entries (record entries consist of either citations or collisions) in a 12-month period is scheduled for a conference with a Driver Improvement Analyst. The interview is scheduled because any driver with four entries represents a very high collision potential, and in many cases has demonstrated that potential. The purpose of the interview contact is to point out to the driver the consequences that can stem from having a poor driving record. Younger drivers who have a higher likelihood of driving problems because of aggressive driving behavior are given an opportunity to identify the causes of their driving errors and outline methods of correcting them. Older drivers who normally have a higher likelihood of being preoccupied while driving are shown a technique to overcome that preoccupation. All drivers attending interviews have a control status such as probation placed on their record for a stated period of time. If the driver con-

tinues violating during that control period, a follow-up action is taken if the driver is on probation, suspension of the license is the next action taken.

A common misconception is that the department arbitrarily suspends a driver's license on the basis of point accumulation. Normally, the driving privilege is not suspended unless the driver has had an opportunity for at least one personal contact with a departmental representative. It is felt that arbitrary suspension is ineffective as a means of driver rehabilitation.

Driver Improvement clinics of various types are made available when experience and research indicates that they are worthwhile. This is part of a continuing effort to help the problem driver correct his driving before he gets to the point of being suspended.